THE

CHARACTER OF THE REBELLION,

AND

THE CONDUCT OF THE WAR.

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THE REBELLION AND THE WAR.

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1. *An Ordinance to dissolve the Union between the State of South Carolina and other States united with her under the Compact entitled "The Constitution of the United States of America," passed unanimously at* 1.15 *o'clock, P. M., December* 20, 1860. Charleston Mercury Extra.
2. *Message of* PRESIDENT DAVIS. National Intelligencer, May 7, 1861.
3. *Speech of* HON. J. A. MCDOUGALL, *of California, on the Confiscation of Property, delivered in the Senate of the United States, March* 12, 1862. Washington. 1862.
4. *The Prayer of Twenty Millions. Letter from* HORACE GREELEY *to Abraham Lincoln, President of the United States.* New York Tribune, August 20, 1862.
5. *Letter from* PRESIDENT LINCOLN *to Horace Greeley.* New York Tribune, August 23, 1862.

WE have placed the title of the Ordinance of Secession by the Convention of South Carolina at the head of this article, not only because it was the first in time, but also because it shows the form and manner in which it has been supposed that secession was to be accomplished. For this last reason, as it is very brief, we copy it entire, in these words, to wit: —

"We, the people of the State of South Carolina, in convention assembled, do declare and ordain, and it is hereby declared and ordained, —

"That the ordinance ordained by us in convention on the 23d day of May, in the year of our Lord 1788, whereby the Constitution of the United States of America was ratified, and also all acts and parts of acts of the General Assembly of this State ratifying amendments of the said Constitution, are hereby repealed; and that the Union now subsisting between South Carolina and other States under the name of 'The United States of America' is hereby dissolved."

It will be observed that it appears as a simple repeal, or attempt to repeal, the ordinance by which the people of the State adopted the Constitution of the United States, thereby uniting with the people of the other States in the establishment of a general government over the whole. This attempt to repeal an act which is in its very nature irrepealable has been followed substantially in the other seceding States, with such difference of formula as the difference of circumstances under which they entered into the Union required. We shall have occasion to note hereafter, on the supposition that the repeal could be legally and constitutionally operative, that some of the important incidents and consequences which have been claimed as attaching to it are but mere unjust demands and exactions upon the United States.

That part of the Message of Jefferson Davis to the Confederate Congress which relates to, and endeavors to explain and assert the legal validity of, the so-called right of secession, we reviewed, in an article on that subject, in our number for April, 1861. We recur to the Message for the purpose of examining the reasons which are supposed to justify the actual secession, arising from wrongs and grievances on the part of the United States prior thereto. Those reasons are set forth at large in an extract from the document in the article just mentioned. This Message to the Confederate Congress was designed to sum up in plausible phraseology the particulars

of the several bills of indictment which the seceding States deemed themselves authorized to prefer against the United States; and a reference to these specifications is sufficient, therefore, to show the character of the rebellion in its inception, as set forth by its own leaders. The allegations against the Northern States and the people of those States seem to resolve themselves into five particulars: —

1. The rise and growth in the Northern States of a political school which has persistently claimed that the government formed by the Constitution was not a compact between States, to secure the blessings of liberty and independence against foreign aggression, but was in effect a national government set up above and over the States.

2. The imposition of burdens on commerce, as a protection to the manufacturing and shipping interests of the North.

3. The assertion at the North, as an undeniable axiom, that the theory of the Constitution requires that in all cases the majority shall govern.

4. A persistent and organized system of hostile measures against the rights of the owners of slaves in the Southern States.

5. The organization of a great party for the purpose of obtaining the administration of the government, with the avowed object of using its power for the total exclusion of the Slave States from all participation in the benefits of the public domain, and of surrounding them entirely by States in which slavery should be prohibited; and the success of the party, thus organized, in the election of its candidate for the Presidency.

It is to be remarked, that much of the matter of grievance consists of speeches, of dogmas, and of laws relating to persons claimed as fugitive slaves which were never executed, and that little of actual injury is set forth, unless it be found in the election of President Lincoln, who was not the Southern

candidate. This recital of Southern grievances and wrongs, in the official Message to the Confederate Congress, cuts a very sorry figure by the side of "the glittering generalities of the Declaration of Independence."

The first and third of these charges may be disposed of in a few sentences. How far the organization of the government had other objects than that of securing the people against foreign aggression, may readily be seen by referring to those parts of the Constitution which grant powers to Congress, and prohibit action by the States in certain cases. These parts show very conclusively that the attempt of Mr. Davis to represent the government of the United States as one created solely, or mainly, "to secure the blessings of liberty and independence against foreign aggression," is a gross misrepresentation. To this it may be added, that the notion of a national government, which is charged upon a political school of the Northern States, has been equally the notion of many learned, wise, and popular men in the Southern States. Edmund Randolph, one of the deputies of Virginia, laid before the Convention which framed the Constitution sundry propositions "concerning the American Confederation and the establishment of a national government," May 29th, 1787, in the form of resolutions. These resolutions provide for the establishment of a "national legislature," "a national executive," and "a national judiciary." The principles of these resolutions entered very largely into the construction of the Constitution as subsequently adopted.

We are not aware that the democratic dogma, that the majority of the people must govern in a republic, was more universally accepted at the North than at the South, until it appeared from the increase of population that the North would soon not only have such majority, but perhaps would be disposed to apply the principle. From the time it became probable that the South would lose the ascendency which had

long been enjoyed, — partly by means of the representation based upon their slaves, and partly by the co-operation of the Democratic party at the North, — the dogma that the majority of the people had the right to rule became very distasteful to the leading Southern politicians; but we must admit our surprise to see this gravely put forth as one of the grievances which in a republican government requires revolution or secession.

The second, fourth, and fifth specifications of grievance in Mr. Davis's Message — to wit, the protection to manufactures and the opposition to slavery — require a more extended notice. Whoever attempts to judge respecting the merits or demerits of the rebellion, must not commence his investigation at the election of Mr. Lincoln; nor at the passage of any tariff law, even as far back as that of 1824; nor at the agitation of Garrison and his compeers, Foster, Pillsbury, the Abbys Kelly and Folsom, and Wendell Phillips, respecting slavery; nor at the passage of Personal-Liberty Laws in several of the States; nor at the recent opposition to the extension of slavery into the Territories; nor even at the struggle against the admission of new States without a prohibition of slavery therein, as in the case of Missouri, in 1819 and 1820. The foundation of the present controversy between the Southern and the Northern people dates farther back than all these.

How the imposition of burdens on commerce would protect any shipping interest, the writer of the Message does not explain; but we let that pass. The gravamen of the whole charge respecting protective duties is founded on the most gross misrepresentation. The protective policy had its origin with the South, and the Northern people adopted it only when their industry had been driven into channels which required it. That they have since been in favor of it furnishes no just ground of complaint against them. For a long period after the Revolution, the people of the North were mostly agricul-

turists, except upon the seaboard, where there were shipping interests of great magnitude.

There were extensive household manufactures of cotton and wool, mainly for home consumption. The first protective duty was a specific duty of three cents a pound on cotton, to encourage the production of that article in South Carolina and Georgia, and this burden was borne by the manufacturers and consumers of the North. The embargo, which struck almost a death-blow to the shipping interest of New England, was a Southern rather than a Northern measure. The protective tariff of 1816 was Mr. Calhoun's tariff, passed by Southern votes, — justified, we admit, to some extent, in order to preserve large manufacturing interests which had grown up during the war. When it was found that the Northern people, accommodating their industry to the state of things which had been forced upon them, were deriving a greater benefit from manufactures than the South, slave labor being ill adapted to that branch of industry, a change came over the spirit of the Southern dream, and a protective tariff was found to be a Northern invention, and a great political grievance. It is not wonderful that the North, which had been obliged to change the course of its industry by reason of non-intercourse, embargo, and war, should not have been ready to change back again, to the destruction of the interests which had been brought into existence and fostered by those measures.

The amount of the losses of slaves occasioned by all the Personal-Liberty Laws of the States, and all the efforts of "Liberators" and "Heralds of Freedom," and of Abolitionists in Congress and elsewhere, up to the time of this present warfare, will not begin to compare with the pecuniary losses of the Northern States, at different times, in their navigation and their manufacturing interests, occasioned by Southern measures and Southern votes.

The alleged inequality of the tariff is not admitted. The South has, as we believe, had as great a measure of protection for all products which by reason of foreign competition required it, as the North. Supposing, however, that an inequality has existed, by reason of which the South has paid a greater share of duties than the North, there has been no injustice, because the revenue of the country is derived mainly from the duties imposed on importations, instead of direct taxation, from which source it was originally expected that the revenue would be derived, and of which the Slave States were by agreement to pay an unequal proportion, on account of their unequal representation in Congress. No tariff can operate with perfect equality. Taxation in any form never does so. If the relative proportion paid by the Slave States in the shape of duties, and of increase of price in consequence of duties, is not greater than the relative proportion of those States would be if the revenue were raised by direct taxation, under an apportionment of that taxation which should embrace three fifths of their slaves, according to the provision of the Constitution, — and the revenue raised by the duties is graduated by the wants of the government for its annual expenditure, as has been the design that it should be for many years past, — then we say that those States have no just cause of complaint on that score. We shall see this more clearly as we proceed. It certainly cannot be shown, that, of all the duties, the Slave States have borne as large a share as they must have paid of direct taxes had the revenue been raised in that manner. It must be borne in mind, that the duties assessed on importations are often borne by the producer, and not by the consumer. A memorable instance of this may be found in the duty on molasses, imposed by the tariff of 1828, which was inserted in the bill by Southern votes, because it was supposed it would make the bill so distasteful to the North as to defeat it. The North took it, "drugged as it was," and the price

was not materially increased. The tariff of 1842 discarded to a great extent protective duties, and they have hardly been heard of as a cause of complaint for several years, a better subject for agitation having been found in slavery.

The origin of the difficulties which have resulted in the attempted secession is to be sought as far back as the adoption of the Constitution itself, and perhaps earlier. The question arose in the Congress of the Revolution, how the quota which each State ought to furnish toward the expenses of the war should be determined. It was at first agreed that apportionment should be made according to a valuation of property. But only one State — New Hampshire — furnished a valuation. Then it was suggested that the number of persons in each State might be taken as the basis. But delegates from Slave States immediately objected that slaves ought not to be included in the enumeration, because slaves did not produce as much as freemen. There was great debate upon the subject, which resulted in a compromise, by which three fifths of the number of slaves were to be added to the number of free persons.

In the Convention which framed the Constitution, the subject of revenue, which it was then believed, as we have already suggested, would be raised mainly by direct taxation, brought up the same question respecting the basis of apportionment. As before, there was an attempt to escape from an apportionment which should embrace slaves in the enumeration of persons. This resulted in another compromise, by which three fifths of the number of slaves were to be included in the enumeration of persons for the purpose of apportioning the taxes among the several States, and the Slave States were to be entitled to a representation upon the same basis, — the provision in the Constitution upon these subjects being in these words: "Representatives and direct taxes shall be apportioned among the several States

which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons." The principle of the Revolution, that taxation and representation ought to go together, was exemplified in this compromise. On this basis, the Slave States have had the benefit of a representation founded upon the number of their slaves, constantly increasing, until, according to the census of 1850, it actually amounted to twenty-one members, the slaves, however, having no vote in the election of them. The oligarchical democracy of the South has had so much of political advantage. But the burden of direct taxation, proportioned upon three fifths of the slaves, which was the equivalent, has almost wholly failed, because the revenue has been raised, with very limited exceptions, by duties on imports and by sales of public lands. As a necessary result, there has been a growing repugnance to the extension of slavery, aside from all moral considerations, on account of this unequal political representation, — an injustice which every extension of slavery, and every admission of a new Slave State, has aggravated.

It must be considered, also, that the Constitution, with this unequal representation, was made for the territory embraced in the treaty of peace with Great Britain. The admission of new States formed from territory acquired outside of those limits was not contemplated nor provided for, and every admission of a Slave State from such territory tends to a further extension of this inequality of representation. The admission of Louisiana, Florida, Arkansas, Missouri, and especially of Texas, furnishes, unquestionably, some of the reasons for a hostility to slavery which has borne fruit, perhaps, in Personal-Liberty Laws, as well as in efforts to exclude slavery from the Territories, in order that there shall not be an increase of Slave

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States, and thereby a further extension of a representation already unjust.

Again: In considering the temper which led to the Personal-Liberty Laws, and to the restriction of the extension of slavery, we must by no means ignore the laws of some of the Southern States — South Carolina and Louisiana — upon the subject of free Negroes, under which persons of that class belonging to Northern vessels have been imprisoned without even an allegation that they had committed any offence, and by which they would have been sold into slavery, if the fees and charges of that imprisonment had not been paid. The attempt by Massachusetts to test the constitutionality of those laws, first, by the employment of counsel in those States, and, when that failed because counsel there declined to take a retainer, by sending Mr. Hoar as agent to South Carolina, and Mr. Hubbard to Louisiana, to institute suits for that purpose in the Courts of the United States, — and their subsequent expulsion from Charleston and New Orleans, under circumstances of great excitement and indignity, — have, in our belief, had more to do in exciting a bitter feeling of hostility to the institution of slavery, than all the speeches of any half-dozen orators or oratresses, white or colored. To say nothing of the preposterous pretension, that the question whether those laws were constitutional or otherwise should not be submitted to the consideration and determination of a judicial tribunal, or of the injustice necessarily attending their enforcement, — the circumstances of insult accompanying the expulsion of Messrs. Hoar and Hubbard were not likely to be forgotten by the people of Massachusetts, and the feeling thus excited has been largely extended to other States.

The repeal of the Missouri Compromise, and the subsequent attempt to force slavery into the Territory of Kansas by fraudulent voting and fraudulent returns, by a blockade of the Missouri River outside of the Territory, and by the murder of

peaceable citizens within it, may furnish some palliation and excuse for an excitement which would render Personal-Liberty Laws popular, even if such circumstances cannot prove their constitutionality. In pursuing the design and purpose of preparing the Territory so that when it became a State it would send two Senators and a Representative in sympathy with the South and devoted to Southern interests, no regard was had to personal or political rights. Fraud and injustice marked every step of the progress, and marauding bands from South Carolina and Georgia attempted to complete by force what fraud was not strong enough to accomplish. That corrupt politicians at the North should participate in this iniquity, was in character with their antecedents; and that demagogues at the North should avail themselves of the just indignation excited by such outrages, and endeavor to make political capital for themselves, on the other side, by inflammatory speeches and extreme measures, without regard to their constitutional obligations, was but a natural consequence.

In estimating the morality of the rebellion, it must be recollected that there has always been a strong party at the North sympathizing with the South, partly from political, and partly from personal associations; and a still larger number who have been willing to fulfil all their constitutional obligations, although they have been disposed, and are determined, no longer to give way to Southern insolence and aggression. It is to be noted further, that, at the very time when the rebellion was planned and broke out, five of the nine judges on the bench of the Supreme Court of the United States were from the Slave States, and that these, with one of the judges in the Free States, had expressed and recorded their opinion that slaveholders had a constitutional right to carry their slaves into the Territories, and hold them there, any legislation of Congress to the contrary notwithstanding. One other judge from a Free State did not see fit to record a dis-

sent to this doctrine, leaving himself free to assent to it at any time afterward, when his convictions of official duty should require such an opinion. We admit that this opinion of the six judges was a "*dictum*," and erroneous. We aver that it was perfectly outrageous, a gross usurpation of power deserving impeachment, because the question was clearly political, and not judicial. But it was quite improbable that those who had thus committed themselves to the interests of the South would retrace their steps, and the constitution of the Senate rendered impeachment hopeless. Secession was not required to secure or save any of the alleged rights of the South. If the Southern Senators had remained in their places, Mr. Lincoln and his Administration would have lacked the power to do evil to Southern interests, even if they had been so disposed. But it is true that the constitution of the House of Representatives was likely to be such, that the South could not rule Congress as it had been accustomed to do, and the incoming incumbent of the Presidential chair presented an absolute bar to Southern domination.

It may not be amiss to consider here two or three objections which have been raised against the attempt of the United States to suppress the insurrection, and which have been urged independently of the reasons alleged for the secession itself.

It has been contended that the attempt at coercion is in violation of the democratic principle that the people are entitled to govern themselves, and of the republican principle that this right to govern resides in the majority. It is alleged that the people of the Southern States are, on these principles, entitled to choose their own government; moreover, that not merely a majority of the people of the seceding States prefer to change their institutions by forming the Southern Confederacy, but that there is great unanimity among them in this particular.

The principles thus adduced are acknowledged as funda-

mental principles, and the fact of the unanimity to the extent mentioned may be admitted for the purpose of the argument. But who are "the people" who, upon the general principles thus stated, are entitled to govern themselves? It is not a few individuals in a community who possess this right of self-government. This is shown by the other principle, that the majority possess the right of determination. The dissent of a minority may be entitled to respectful attention, but it cannot furnish the rule of government. Then, again, who compose this majority of the people which is entitled to determine the form of government? Certainly not the majority of the people of any town, county, or borough; and as clearly not the majority of the people of any of the States, or of any number of States, in all the particulars for which government is instituted. To a certain extent, the majority of the people of a State may fashion the institutions of that State. So far as a change will not affect the Union, or violate the Constitution, directly or incidentally, they may act, because to that extent they are an independent community. But neither the majority of the people of a State, nor the whole people of it, can adopt any other than a republican form of government, because the United States guarantee such a form of government to all the States, and are bound to the whole to fulfil that guaranty by not permitting any one to deviate from the established form. Neither the majority nor the whole people of a State can change its institutions so as to coin money, levy duties on imports, enter into treaties with foreign governments, or do anything expressly or impliedly forbidden by the Constitution. So that upon the point in issue the question comes to this,— Is secession permitted by the Constitution? And we have heretofore shown that it is not, in reviewing Mr. Davis's Message.

The majority recognized in the republican principle is the majority of the community to be governed, or under govern-

ment. In this instance, the whole people of the United States, so far as the purposes for which the United States government was instituted, have alone the lawful right to change or alter that government, except as it may be altered in the manner prescribed by the Constitution, which has provided specific modes in which amendments may be made. That the Constitution was originally adopted by majorities of the people in the several States, does not affect the application of this general principle; for by that adoption they became *one people* for the purposes of the government thereby instituted, although they were not so before.

We admit, that, if there is oppression too great to be borne, there may be rebellion, which may ripen into revolution; but this is altogether different from the "right of secession," as we have heretofore shown; the right of revolution in resistance of oppression being a personal right, and the so-called right of secession being set up as a State right.

Again: It has been urged that the course of the Southern States has been in accordance with, and in fact justified by, the course of the Colonies in their separation from Great Britain, and that, on the principles then maintained, the United States are wrong in resisting the attempted disruption of the Union. This seems a favorite position of some of our Transatlantic cousins, to say nothing of certain sympathizers on this side of the water. But, in truth, so far from the cases being *ad idem*, there is scarcely a similitude between them. A very brief reference to the contrast is all which our space allows us. We need not avail ourselves of the impassioned language of Colonel Barre, that the oppression of England planted the Colonies in America; — it is sufficient that they were not planted by her care. When, by their indomitable industry, they had become worth her attention, the fostering care of the mother country was extended to them by the appointment of rulers over them, — in many instances, not from among themselves, but from

her own population; — rulers who cared more for amassing fortunes through official corruption, than for the welfare of the people whom they governed. She was prompt to take the benefit of their military services against her ancient foe, the French. She loaded their trade with onerous imposts, and restrictions of which she bore no share. And when the wealth and industry of the Colonies became sufficient, she insisted upon raising a revenue from internal taxes, at the same time that she allowed them no representation whatever in Parliament, where these duties, restrictions, and taxes were imposed. These *impositions* at length became intolerable, and the Colonists determined upon resistance. She made the first warlike attack at Lexington, and again at Concord. They fought the war through in fair fields, and the separation was accomplished with no further effect upon the interests of Great Britain than the loss of so much of her colonial possessions. She was not rendered subservient to them, in their new state of independence, either by treaty or by geographical situation.

Now for the contrast. Part of the seceding States were originally Colonies, and united with the others in achieving their independence, or rather had it achieved for them. Most of the others are formed from territory purchased by the United States, and all have voluntarily come into the Union, under the Constitution, participating in all the rights derived under it, and assuming all the obligations which it imposes; being received upon an equality with the older States. The statute-book is full of provisions for their advantage. The Indians have been removed from some of their borders at great expense, to say nothing of a violation of public faith, because they desired it and insisted upon it. If we recollect aright, the Florida war, undertaken to remove Billy Bowlegs from the Everglades, cost the United States some fifty millions of dollars. We have not the presumption to say that the present war is not sent by the God of justice in part as punish-

ment for the outrages committed in that war, and in the removal of the Cherokees from Georgia. The seceding States have had a representation in the national councils, not merely in equal proportions, but beyond that of the Free States, through the basis of their "peculiar institution." Their influence has directed the policy of the country in a greater degree than that of the Northern States. The Mexican war was waged mainly at their bidding. When they chose a protective tariff, the policy was protection. When they said that the tariff must be for revenue alone, it was made a revenue tariff, with only incidental protection to some interests, partly to secure certain votes. They have had more than a fair share of military and naval appointments. It has been the privilege of the North to furnish the sailors and a large proportion of the bone and muscle of the army. They objected to the distribution of "incendiary matter" — publications against slavery — through the mails, and the Post-Office Department prohibited it. They demanded mobs to put down abolition harangues, and the mobs were forthcoming; but the remote consequences were not favorable to them. They said that a more stringent Fugitive Slave Law was necessary, and one was enacted too stringent to subserve its own purpose, because it excited hostility from its injustice. When they wanted that Kansas should be a Slave State, the Missouri Compromise was repealed, and it was moreover found by grave judges that it was unconstitutional. The Democratic party of the North had so far acted in the interests of the South, as to lead the conspirators to rely upon that as an element of success in their secession. Commodore Stockton's declaration in the Peace Convention, that for every regiment raised at the North for the purpose of coercion, two would be raised to arrest its march, was only an expression of the sympathy upon which the conspirators had relied to carry them through without any very serious struggle on their part.

If they did not increase in population and wealth like their Northern neighbors, it was not by reason of any inequality of tariffs, or any other oppression, but by reason of the slavery which they cherished, and the unthrift attending their modes of living.

Notwithstanding the comparatively small increase of population in the South, there was for a long time no lack of increase in the number of Slave States. In fact, at one time there was an attempt to prevent the admission of a Free State, unless a Slave State were admitted to balance it; and this was long before Personal-Liberty Bills were thought of. Maine and Missouri were admitted within a few days of each other in 1820, the admission of the former having been delayed by the controversy in relation to the latter; Michigan and Arkansas were admitted on the same day in 1836; and Iowa and Florida were tied together in the same act, in 1845, although Texas had been admitted by herself three days before.

Up to 1852, out of eleven Presidents of the United States, seven were of the Slave States, five of them for two terms each. There had then been four Presidents from the Free States, three of whom held for a single term each. President Harrison died shortly after the commencement of his term, John Tyler being the Southern Vice-President; and General Taylor, one of the Southern Presidents, died in the earlier part of his term, leaving the administration to Millard Fillmore, a Northern Vice-President. The two Presidents who occupied the chair from 1853 to 1861 were "Northern men with Southern principles," having in their Cabinets Jefferson Davis, Cobb, Floyd, and Thompson. Finding that the sceptre was about to depart, the Southern leaders prepared for a rebellion. It would probably have come in 1856, if Fremont had been elected, although the Northern people could not believe that there was danger of it. The breach in the Democratic Charleston Convention, in 1860, and the nomina-

tion of Breckenridge, were designed to secure the election of a Republican candidate, and thereby to force the Southern States into secession.

The mode in which the rebellion commenced is in contrast with the colonial resistance to the authority of the mother country. The Colonists entered upon their rebellion by a fair, open, and manful opposition to measures of hardship and oppression. Three members of the Cabinet of Mr. Buchanan prepared the way for secession by a traitorous misuse of their official position, and a scandalous violation of their official oaths. Most of the Senators and Representatives of the States which have seceded conspired with them. The treason was concocted while the conspirators were in the service of the United States, and receiving pay from the United States, thus showing them to be worthy compeers of Benedict Arnold.

The legitimate result of the argument by which secession was supported, if the argument were correct, would be that the State itself which had seceded resumed thereby her State rights and State possessions. Secession, upon its own theory, would carry nothing with it belonging to the United States. But the secession argument is as flexible as india-rubber. The position that the Constitution is a political *compact* of confederation for political purposes, which is made the basis upon which the right of secession exists, is forthwith converted into an allegation that the compact is in the nature of a partnership, in which, if there is not a regular account of profit and loss to be stated, there is, according to the new Confederate law of partnership, a right of dissolution at the pleasure of any one partner, notwithstanding the contract made it perpetual; and upon the dissolution there is to be a division of stock, by which the Confederacy, which was not a partner, but born since the dissolution, is to be entitled to a share of the territories owned by the United States, to all the islands and fortifications, with their munitions of war,

which may be found along the coasts of the seceding States, and to the mints and sub-treasuries, and all the money and machinery therein. We must understand that these things are not claimed and taken under a right of revolution, which would give no claim except to that portion of government property which might fall into the hands of the insurgents, and be appropriated under the law of force; but this claim is made under the alleged right of secession, which, as we have seen, is described as the reserved right of a State to withdraw peaceably, by a repeal of the act by which it came into the Union. The colonial resistance to the mother country was coupled with no such claim of partition of territory.

We refer to but one other matter to complete the contrast between the Revolution of 1776 and this rebellion. By the second article of the treaty of peace with Great Britain in 1783, it was agreed, among other things, that the boundary of the United States, from the northwestern point or corner, should be "a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude"; and by the eighth article of the same treaty it was stipulated, that the navigation of the river, from its source to the ocean, should forever remain open to the subjects of Great Britain and the citizens of the United States. Great Britain has other means of access to her colonial possessions in America, and makes little if any use of the Mississippi to communicate with them. The stipulation of the treaty is, and has been, of very little practical importance to her, except as regards the navigation of that part of it which at the time of the treaty was in the possession of Spain. Spain then held Louisiana, lying on both sides of the river south of the thirty-first degree; but, having been afterward transferred to France, it came into the possession of the United States by the treaty of Paris, April 30, 1803. There are various provisions in the acts and laws

of the United States to secure the free navigation of the Mississippi to all the citizens of the United States, particularly in the acts for the admission of the States of Louisiana, Mississippi, and Missouri into the Union. The act for the admission of Louisiana contains the following clause: —

"*Provided*, that it shall be taken as a condition upon which the said State is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the Gulf of Mexico, shall be common highways, and forever free, as well to the inhabitants of the said State as to the inhabitants of other States and the Territories of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State; and that the above condition, and also all other the conditions and terms contained in the third section of the act, the title whereof is hereinbefore recited, shall be considered, deemed, and taken fundamental conditions and terms upon which the said State is incorporated in the Union."

We are not clear that it may not be technically and legally maintained that Louisiana, by a breach of this condition, has "become *felo de se*," and may be treated as having returned to her territorial *status*.

Now it is well known that almost the first act after the secession of Mississippi was the planting of a battery or batteries at Vicksburg, if we mistake not, in the first instance, and an interruption of all commerce on the river, except at the pleasure of the Secession authorities, resulting shortly in its being entirely closed. It was intended as a measure of coercion against the Northwest, to the prosperity of which the navigation is of vital importance, and it must be opened again, and held free to all, according to the treaty, laws, acts, ordinances, and conditions by which it was supposed to be originally secured. If the rebellion shall be successful, the river, from the northern line of Tennessee downward, is within the jurisdiction of a foreign state or states. The laws and conditions to secure the free navigation of it become a dead

letter, and the whole Northwest will be thus far "subjugated," and hold their title to the use of the river, from that time forth, at the pleasure of the seceding States.

The case stands thus. If the rebellion is suppressed, and the seceding States are "subjugated," they return to their places in the Union with all the rights and privileges which they had before, unless by the tenacity of their resistance they aid the Abolitionists in getting up another revolution, founded on immediate emancipation, through conquest or State suicide, and a prostration of State rights, not warranted by the Constitution. If, on the other hand, the secession becomes a successful revolution, the United States, and particularly the Northwestern States, are really brought into subjection, and hold their rights to the navigation of this great medium of internal commerce, and even of foreign commerce through the Gulf, at the pleasure of the Confederacy.

We pass from the general character of the rebellion, as it exhibited itself at the outset, to a brief consideration of the conduct of the war.

With respect to active warfare in the field, it must be admitted that the generalship exhibited by the rebel commanders, particularly in the month of August just passed, will not suffer by a comparison with that of the commanders of the United States. But here we must not overlook the fact, that, from their geographical position, their superior knowledge of the topography of the theatre of the active hostilities, and their greater resources for obtaining information respecting military movements by the aid of the inhabitants, they have had largely the advantage. There have been no better soldiers in the field than the greater portion of the troops of the Union. There have been too many of the officers who have obtained their commissions through political or personal favoritism.

The partial lack of success in the conduct of the war on the part of the United States, has been owing mainly to other

causes than those immediately connected with operations in the field.

We supposed, when Mr. Cameron vacated the War Office, that it was to be filled by one who, with the broad views of a statesman, discarding all considerations but those of country, would, by a vigorous prosecution of the war, conquer a constitutional peace. But we were mistaken, and reminded strongly of the frogs who desired a king. It is alleged that there have been jealousies among the generals of the army, causing disaster. Gray wrote in his Elegy:

"The paths of glory lead but to the grave."

Since the time of General Jackson, however, the American version has been that they lead to the Presidency; and, as might have been expected, on the breaking out of the rebellion there was a great demand for major-generalships and other generalships, colonelships, and other -ships, not merely by those who had made arms a study, and whose proper business it was, therefore, to suppress the rebellion, but by others, who were desirous of getting into those paths, and by their hangers-on, who were earnest that they should do so. If Mr. Secretary Stanton has had a determination that no general in the field should eclipse the glories of the War Office, the measures which have been taken in reference to field operations have been well adapted to prevent any of the competitors from being covered with glory. One of the uninitiated may, indeed, be astonished to find how one general may be played off against another, and one kingdom (that is, military department) may be divided against itself, until none of them can stand; and by such operations, assuredly, the Satan of the rebellion is not to be cast out. When we see a Secretary of War, in an order out of the regular course, complimenting a general who, by a forced march of the order of *dash*, is said to have put one fifth of his command in the hospital, and in-

serting in the order a sneer understood to be aimed at the General-in-chief for his inactivity; and when we see him sending a letter to a newspaper, containing another sneer aimed at the same general for the prudence which, by means of discipline, had sought to "organize victory," we may be sure that some idea besides that of the suppression of the rebellion had obtained a lodgement in the War Office. In this last letter the Secretary, modestly declining all share in the honor of certain then recent victories, defers "to the spirit of the Lord, that moved our soldiers to rush into battle, and filled the hearts of our enemies with terror and dismay." And he adds: "We may well rejoice at the recent victories, for they teach us that battles are to be won now and by us in the same and only manner that they were ever won by any people or in any age since the days of Joshua, — by boldly pursuing and striking the foe." If the Secretary is still disposed to follow in the wake of Joshua, we may soon see a War-Office advertisement for the purchase of rams' horns. It seems never to have occurred to him, that, if your adversary has studied and practised the "science of fence," he may parry the blows aimed at him, and that you should at least have enough of strategy to prevent him from bestowing upon you in return a kick *a posteriori*. General Pope appears to have acted on the Secretary's strategy. He said, in one of his early orders, "Shame and disaster lurk in the rear"; and he found himself to be a true prophet.

But the War Office is by no means responsible for all our misadventures. The source of the greatest disasters, as well as of much minor suffering, has been the efforts of members of Congress, collectively and severally, to manage the war. The cry of "On to Richmond!" before the army had been disciplined, or even organized, wherever it had its origin, had its echoes in Congress. It has been said that the teamsters set the example of panic at Bull Run. We are not quite sure

that this is doing full justice to the field-marshals of Congress, who urged the advance in the first instance, went out as spectators, and certainly did not take "the paths of glory" on their return to Washington.

There is no lack of testimony that, so far as it may be deemed the duty of members of Congress to decry and defame the General-in-chief of the forces in the field, it has been most diligently performed. The *salons* of Washington, the hotels on the route to and from that place, and the highways and sidewalks, concur in testifying that in all the days of the year, and in all the hours of the day, there has been no lack of zeal on this behalf. The Chairman of the Military Committee in the Senate seems to have been specially detailed as skirmisher in this service. We submit that all these attacks upon the commander, whether the fire comes from the War Office or the halls of Congress, have a direct tendency to "discourage enlistments," and the provost-marshal should see to it.

In another department of the service, the evidence is not so direct and clear. If the historian of this war shall gain access to the sources of information, he cannot fail to give the country some light upon the proceedings of the "Committee of Congress on the Conduct of the War," besides what is contained in their voluminous report. The great object of war is to "punish our enemies." It is believed that the committee were practically adepts in this part of the science of war, and it is to be regretted that their modesty should have deprived the country of an exposition of their merits in conducting the hostilities on their part. It is supposed that in regard to another branch of modern warfare, that of "rewarding our friends," this committee were not novices; but, as in the case of testimony taken in chancery, until the time of publication arrives, the seal which shields their motives, and some of their actions, from inspection, cannot be broken.

The most astonishing blunder in the conduct of the war has

been the neglect to bring a sufficient force into the field at an earlier day. It required but the comprehension of two facts, by any one whose duty it was to have ideas upon the subject, to show him, in the first instance, that the numbers of the forces of the United States in the field must be wholly inadequate to the work assigned to them. These facts are, that the rebels are in the possession of the centre of the theatre of the war, and that the United States are operating on the circumference of it. The conclusion is at once reached, that the rebels have an advantage of position which requires us to place in the field at least two men to their one, — ay, even more than that. The facility with which they can mass their troops at any given point upon the circumference, either for defence or attack, has no corresponding advantage on our side. Until the severance of the railroad communication in Tennessee, by General Mitchell, Confederate troops could be transferred from Richmond to Corinth, and *vice versa*, in a very short period, without any knowledge of the movement by the Federal commanders. But the transfer of Union forces from Washington to Nashville, or from the latter place to any point outside of Tennessee and Kentucky where such troops might be needed, not only required great length of time, but it was impossible, under existing circumstances, to make such transfer without the knowledge of the Confederate authorities that the movement had begun long before it was finally terminated. We need only indicate the necessity for this greater force, without going further into the reasons for it. Yet, in the very teeth of this obvious consideration, the chairman of the Military Committee in the Senate, in March last, said in his place : —

"It was suggested, also, that we ought to stop recruiting. I agree to that. I have over and over again been to the War Office, and urged upon the Department to stop recruiting in every part of the country. We have had the promise that it should be done ; yet every

day, in different parts of the country, we have accounts of men being raised and brought forth to fill up the ranks of regiments. The papers tell us that in Tennessee, and other parts of the country where our armies move, we are filling up the ranks of the army. I believe we have to-day one hundred and fifty thousand more men under the pay of the government than we need or can well use. I have not a doubt of it; and I think it ought to be checked. I think the War Department ought to issue peremptory orders forbidding the enlistment of another soldier into the volunteer force of the United States until the time shall come when we need them. We can obtain them any time when we need them." — *Washington Globe*, March 29, 1862.*

In accordance with the opinion thus officially expressed, the recruiting-offices were closed, and recruiting stopped, at the very time when at least half a million of men should have been put into camp and drilled for service. It was said that the recruiting-offices were expensive. A protracted warfare is much more so. In consequence of a lack of forces, the operations along the Atlantic seaboard have been confined to the coast, and General Burnside has not been able to penetrate into North Carolina, or the commanders at Port Royal into South Carolina or Georgia. It is unnecessary to specify other places where the same lack of troops produced like results. Still the cry went up, "On to Richmond!" and the better to enable the General-in-chief to accomplish that object, he was deprived of a large part of the force which had previously been under his command, by the creation of several departments in Virginia, with independent commanders. The idea upon which this was done must have been that a large army would encumber the general, and embarrass his operations. If General McClellan had succeeded in entering Richmond with the force under his command, unless he could have at the same time opened the James River, his whole army would inevitably have been overpowered.

* We are aware that Mr. Senator Wilson has denied that he made such statements, but the denial is entirely overborne by the affirmative evidence.

It has been so long admitted that slavery as it exists in the several States is a local institution, in no way under the control of the United States, that the politicians who regard emancipation as the great end to be accomplished by the war have been somewhat puzzled to find a plausible theory on which they can hope that the people at large will sustain them. They have from time to time put forth divers propositions having emancipation as the immediate or ultimate result. They are not content with the large measure of it which must certainly and necessarily attend the successful prosecution of the war and the suppression of the rebellion; but they want the war conducted with a view to immediate emancipation. Some of the proposed modes in which it has been contended that this might be accomplished were considered in the article on Constitutional Law in our number for April last. Of proclamations for the purpose under martial law, — of the conquest of the seceded States and holding them as territories under the general right of war as between independent nations, for the purpose of emancipation, as proposed by Mr. Conway,* — and of the theory set forth in Mr. Sumner's resolutions, that those States have forfeited their State rights by State suicide, and thus fall under the exclusive jurisdiction of Congress, as other territories, and that thereupon certain of their peculiar local institutions are terminated, — we need not speak further. They seem to have been abandoned for other modes of conducting the war.

Judging from the course of the ultra abolitionists, in and

* On the theory of the government maintained by the rebels as the basis of the rebellion, the seceding States may be conquered, and held as territories. If the Constitution were a compact, and any State might lawfully secede at pleasure, the act of secession by a State would be perfect when it adopted an ordinance of secession. From that time, of course, on this theory, the seceding State becomes, as to the United States, a foreign state, and, in a war between them, the latter may be conquered, and thereafter held like any other conquered territory. All its laws may be changed at the pleasure of the conqueror.

out of Congress, it would seem that they supposed that what we lacked in troops we could make up by declarations or proclamations of emancipation, and with much greater effect. The fierce cry of "On to Richmond!" has been exceeded only by the fiercer cry for a proclamation of emancipation; and it has been urged with an earnestness which ought to be indicative of the conviction, that without such proclamation we could accomplish nothing, and with it could attain everything. Indeed, such has been substantially their declaration.

The formula of the argument by which this class of persons carry on the war at present is substantially this: — Slavery is the cause of the rebellion. In order to a successful prosecution of the war, we must destroy the cause. Nothing else can be effectual. We must strike at the root of the insurrection. And the axe which is to be laid at the root is — a proclamation. It has been contended that the President, under the war power, could issue a proclamation; and when the inquiry has been made, what authority the President has to proclaim emancipation, the answer has been, If he cannot do it as President, he may take the field, and do it as commander-in-chief. In fact the "WE" of Mr. Horace Greeley do not need the aid of the war power to reach the conclusion that the President might declare emancipation. In his letter addressed to the President, entitled "The Prayer of Twenty Millions," it is said: —

"Had you, Sir, in your Inaugural Address, unmistakably given notice that, in case the rebellion already commenced were persisted in, and your efforts to preserve the Union and enforce the laws should be resisted by armed force, *you would recognize no loyal person as rightfully held in slavery by a traitor*, we believe the rebellion would therein have received a staggering, if not fatal blow. . . . . .

"Had you then proclaimed that rebellion would strike the shackles from the slaves of every traitor, the wealthy and the cautious would have been supplied with a powerful inducement to remain loyal. As

it was, every coward in the South soon became a traitor from fear; for loyalty was perilous, while treason seemed comparatively safe. Hence the boasted unanimity of the South, — a unanimity based on rebel terrorism, and the fact that immunity and safety were found on that side, danger and probable death on ours. The rebels from the first have been eager to confiscate, imprison, scourge, and kill; we have fought wolves with the devices of sheep."

We thus perceive what might have been done by a declaration or proclamation. Siege guns, shells, solid shot, telescopic rifles, and Minié bullets are as nothing when compared with a proclamation.

We shall not detain our readers by an argument to show that the President, with or without a cocked-hat, has no power to emancipate the slaves, even of rebels. We have no certain assurance that he might not, if he should act in accordance with the requirements of the "WE" of Mr. Horace Greeley, become himself, officially, *felo de se*. But we trust that he will carefully abstain from any kind of suicide, and his answer to the requirements gives us great encouragement.

The war power under the Constitution acting by proclamation seems not, upon consideration, to have been regarded as entirely satisfactory by Congress, and thereupon that body undertook, in the shape of "An Act to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other Purposes," passed July 17, 1862, to provide for emancipation, in the shape of confiscation. Although the provisions of the act appear in a form somewhat different from those of a bill upon which the eloquent Senator from California made the speech, in March last, to which we refer our readers for a learned discussion respecting bills of attainder and confiscation, still the great purpose of emancipation is made manifest throughout. Emancipation as a punishment seems to be uniform, whatever may be the difference of punishment in other respects. That the

emancipation was designed to take effect immediately after the expiration of sixty days from the President's proclamation to the rebels to lay down their arms, seems clear from the act itself. And the sixth section contains a provision, that "all slaves of such persons [persons engaged in rebellion] found or being within any place occupied by rebel forces, and afterwards occupied by the forces of the United States, shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves." Each of the seceding States is a "place occupied by rebel forces." And we trust that every such place will yet be "occupied by the forces of the United States." Is the provision designed to make all the slaves in such "places" free, as captives of war, without trial or judgment? We ask for information.

We are admonished by our limits that we cannot discuss the construction of this act at large. There are two or three propositions which we place before our readers for their consideration.

1. Slavery is not the cause of the rebellion* in the sense in which the emancipationists use that phraseology. Slavery is the pretext on which the leaders of the rebellion rely "to fire the Southern heart," and through which the greatest degree of unanimity can be produced. It is a subject upon which the slaveholders, and many at the South who are not so, are exceedingly sensitive. Mr. Calhoun, after finding that the South could not be brought into sufficient unanimity by a clamor about the tariff, selected slavery as the better subject for agitation. And the ultra abolitionists have not failed to supply sufficient fuel to keep the matter at a white heat. All these projects for immediate emancipation at the present time are direct aids to the rebellion.

It is the inordinate political ambition of the Southern poli-

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* A recent report in the Legislature of Kentucky takes the same view.

ticians which is the cause of the rebellion, — slavery being only a remote agency, as it fosters and develops that ambition, and furnishes it with a subject for agitation; just as the personal ambition of some of the most prominent antislavery men of the North is the cause of their zeal for abolition, their love for the negro and for human freedom being assumed as the best subject on which to agitate themselves into public office. If the nullification of 1832 had become an active rebellion, the tariff would not have been the cause of the war, but only the pretext for it.

2. There can be no confiscation for treason, consistently with the Constitution, without a trial and conviction.*

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* The writer in the Boston Courier who assailed the North American Review in general, and the article on Habeas Corpus and Martial Law in our number for October, 1861, in particular, and whom, in a note to the article on Constitutional Law in our number for April last, we charged with gross misrepresentations of our positions, proving our charge by extracts, has not, so far as we are aware, made any response to that charge, either by way of denial or admission; but "G. T. C.," *who for aught we know may be the same personage*, and to whom we paid our respects in a note on Confiscation, appended to the same article, was stirred up to a reply. As we have the subject of Confiscation again under consideration, we will bestow a brief notice upon it. We are particularly induced to do so by this paragraph contained in it: —

"In the view of the North American, the Constitution has provided that you cannot forfeit more than a life estate in lands by a verdict *and* judgment, but you may forfeit all personalty by a verdict alone, which may be set aside by the court the next day as unwarranted by the law and the evidence. The defendant is then tried again, and acquitted. He is innocent; — but his personal property is forfeited, and gone. He is punished before he is ascertained to be guilty; and when the investigation is completed in accordance with the rules of law, he is found to be innocent when the punishment was inflicted." — *Boston Courier*, April 12, 1862.

Now the North American has suggested no such view, nor enunciated any proposition which in the most remote degree countenances such a conclusion. Did it not occur to G. T. C., when he penned that paragraph, that at the common law there was no practice by which a verdict could be set aside and a new trial granted in cases of treason and felony, and that there was, therefore, at the common law, no opportunity for the preposterous consequence which he suggests as the view of the North American, to wit, that there might be a verdict of guilty, and thereupon a for-

3. A provision that slaves who have taken no part in the war shall be deemed captives of war, and free upon the occu-

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feiture of the personal property, and then the verdict be set aside and an acquittal be had upon a new trial, but the forfeiture remain complete and effective ?

" In case of felony or treason, it seems to be completely settled, that no *new trial* can, in any case, be granted; but if the conviction appear to the judge to be improper, he may respite the execution to enable the defendant to apply for a pardon." — 1 Chitty's Criminal Law, 654. See 6 Durn. & East, 625, 638; 13 East, 416, note *b*, and other authorities.

It is true, that it was early settled that a new trial may be granted in an indictment for treason, in the United States. 3 Dallas, 515, *United States* vs. *Fries*. But under the practice here, of setting aside verdicts in capital cases and granting new trials, no such consequence as that stated by G. T. C. could follow, because when the verdict is set aside the case stands as if it had never been rendered.

" A new trial is a rehearing of the cause, before another jury; but with as little prejudice to either party as if it had never been heard before." — 3 Black. 391.

And this is equally true of criminal as of civil cases. Was G. T. C. ignorant of all this, or is the paragraph which we have cited above only another instance of his way of putting things ? The verdict is set aside because there has been no rightful trial, and so no rightful conviction, and the necessary result is, that there could be no rightful forfeiture arising from such verdict. All the incidents attached to it have gone with it. But there may afterwards be another verdict and conviction, which might operate as a forfeiture if the old common law rules were in force; or there may be an acquittal, which will leave the matter as if there had been an acquittal in the first instance. The foregoing extract, however, is a pretty fair specimen of G. T. C.'s mode of argument.

We pass now to the main question, to wit, whether the Constitution limits the power of Congress in relation to the forfeiture of personal estate, as a punishment for treason, so that the title to his personal estate cannot be taken away for any longer period than during the life of the traitor, leaving a remainder or reversion in such personal estate to fall to his executors, or administrators, — which was the doctrine originally maintained by G. T. C., and applied by him particularly to a forfeiture of slaves, who, he admits, are personal, and not real property. We conceded that the Constitution limited the forfeiture of real property to an estate for life, and pointed out the distinction between the forfeiture of goods and chattels — which by the common law occurred upon the conviction of the offender, and related to the time of the conviction, respecting which the Constitution is silent — and that of real estate, the forfeiture of which by the common law arose from the judgment and attainder relating back to the commission of the offence, and which the Constitution refers to and limits, so that Congress cannot constitutionally punish treason by a forfeiture of real estate for any longer term than the life of the traitor, be that term greater or less.

pation of the place where they are found by the forces of the United States, (by reason of the rebellion of their masters,

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We copied several passages from Blackstone, to show that the forfeiture of personal property arose upon conviction before judgment. G. T. C. says, that Blackstone, "although a most elegant, was not always the most accurate of writers," and says, that he "has made a very imperfect statement of the common law on this subject."

Now let us see what Coke says: —

"If a felon be convicted by verdict, confession, or recreancie, he doth forfeit his goods and chattels, &c. presently. For where a reason hath beene yeelded in our bookes, that the praying of his clergie was a refusall of the law, and for that cause he forfeited his goods and chattels, that doth not hold; for if a man be convict of pettie treason, or murder, or any other crime for which he cannot have his clergie, yet by the verie conviction he forfeiteth his goods and chattels before attainder. And *Stanford* (speaking of a felon convict by verdict) saith that he shall forfeit his goods which he had at the time of the verdict given, which is the conviction in that case," &c. "So as by a conviction of a felon, his goods and chattels are forfeited; but by attainder that is by judgment given, his lands and tenements are forfeited, and his bloud corrupted, and not before." — Co. Lit. 391, *a*.

It may very well be true that the king could not seize the goods to the use of the crown, nor grant them away to any applicant until after judgment. This is perfectly consistent with the fact that they were forfeited. It was the just policy of the same law which caused the forfeiture to occur upon conviction, to permit the goods to be applied to the support of the traitor and his family, and to the payment of his debts, notwithstanding the forfeiture. (Considerations on the Law of Forfeiture in High Treason, 81, 82.) And this shows the reason why the king could not seize the goods, nor grant them to another, in the intermediate time between the conviction and the judgment. It would seem from some of the older authorities that the goods might be inventoried, and security taken, after indictment, and prior to the conviction. (See 2 Hawkins, P. C., ch. 49.) It is said to be the better opinion that the party might take the mean profits of his land up to the judgment, although the forfeiture related back to the time of the offence. (Ibid., sec. 32.)

We submit that there is nothing in the authorities cited by G. T. C. which conflicts with these views; and it is quite evident that his labored argument to show that the forfeiture of goods and chattels is "*worked*" by the attainder has no sound foundation.

It will be noted that we have nowhere contended that there is in this country any forfeiture arising from conviction.

There is another matter to show the true construction of the Constitution. G. T. C. says: "If the Reviewer had a clause which read, 'No attainder of treason shall work forfeiture of real estate, except during the life of the person attainted,' he would have a better ground from which to criticise my construction. Even then, however, he would find it difficult to discover why the framers of the instrument should have assumed that an 'attainder' had nothing to do with personalty." And

but without any trial of the question of rebellion,) is but another mode of enacting emancipation, the captivity being figurative, and the emancipation being the reality. It looks very much like a bill of attainder by Congress, which is forbidden by the Constitution, and there is the further objection to it, that it does not appear on whom it is going to operate, until its operation is practically perfected.*

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with reference to our remark, that "a forfeiture of a life estate in personal property, of which the traitor had the absolute title, would certainly be an anomaly," he says: "It is not denied that they limited the forfeiture of real property to an estate for the life of the traitor. Is that not as much of an anomaly, in reference to the old common law, with all its searches into every possible interest in land, as the forfeiture of a life interest in personalty?" We answer, that it is not. But suppose it were so, what has that to do with the argument? If we have no clause of the Constitution which reads, "No attainder of treason shall work forfeiture of real estate, except," &c., we have the fact that such was the law of England prior to the adoption of the Constitution, and the framers of it undoubtedly had reference to the change which had been made in the law there. The "old common law" was altered by the Statute of 7th of Anne, ch. 21, which contained a proviso that, after the decease of the Pretender, &c., "no attainder for treason shall extend to the disinheriting of an heir, nor to the prejudice of the right or title of any person or persons, other than the right or title of the offender or offenders during his, her, or their natural lives only; and it shall and may be lawful to every person or persons to whom the right or interest of any lands, tenements, or hereditaments, after the death of any such offender or offenders, should or might have appertained if no such attainder had been, to enter into the same." (See 2 Hawk. P. C., ch. 49, sec. 52.) Was G. T. C. not aware of this statute, or was his reference to the "old common law" in connection with the Constitution, instead of a reference to this statute, another instance of his peculiar mode of discussion? It may well be assumed, we think, that this provision of the Statute of Anne was the foundation of the clause which was inserted in the Constitution, in fewer words, but with the same meaning. And thus there is not only no anomaly, but a perfect accordance, between the constitutional provision and the law of England as it was in force after the Statute of Anne.

We suggest to G. T. C. that, the next time he takes occasion to controvert the positions of the North American, it may be well for him to state them and their consequences fairly, and without any attempt to get up an argument founded on a misrepresentation, either express or implied; and we commend this matter to his particular consideration.

* Mr. T. D. Elliot, a Representative in Congress, who made a speech, September 9, at Worcester, the evening before what has been called "the Republican Convention" was held at that place, is thus reported: — "'After the war,' said he, 'there

All the accounts from the army uniformly represent that the soldiers who have thus far fought our battles have neither part nor lot in these projects for universal emancipation. "Let it once be understood," said an educated and intelligent colonel of a regiment which had seen hard service, "let it once be understood that this is a war for the emancipation of the negro, instead of a war in defence of the Constitution, and three quarters of the army would lay down their arms." It is those who stay at home and make impassioned speeches about liberty for the slave, and those who sit and listen and shout, but do not fight, that seek to make emancipation the object of the war. They have two ideas among them. Some, and the greater portion, of those who shout are philanthropists, part of them by profession, a majority by the genuine kindness of their hearts. These have not the faculty of reason strong enough to enable them to consider and judge into what a gulf of perdition any breach of the Constitution by the North at this time may plunge us; nor the caution which counsels not to give up a certain good for an uncertainty. They forget the eloquent peroration of Mr. Webster, in his speech on Nullification. Their idea is emancipation for the sake of emancipation, and some of them would prefer that the Union should be dissolved if slavery cannot be abolished. Another portion of them, consisting of the speech-makers in general, and their body-guard, are striving to avail themselves of the philanthropy of the portion first named, by securing its support for all the various offices of which they are among the most diligent seekers under the face of the heavens. Their idea is office,

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can be no *status ante bellum*.' Mr. Elliot was sure that the time would come when we, joining hands with the Democrats, should demand freedom for the slave, and service for the freedman." — *Boston Daily Advertiser*, September 10.

It may therefore be supposed that this is to be the watchword. The meaning, if we understand it, is that the slave shall be emancipated by compulsion, and then the master required to hire him.

office, office. It would seem as if many of them would give up their chance of heaven for an office; and perhaps, humanly speaking, the bargain might be regarded as a good one. In senate-chambers and on stumps, in pulpits and at picnics, in camp-meetings and at commencements, "the everlasting negro" is supposed to be the best bid for the votes of those whose hearts are better than their heads, who act as if slavery were the only form of oppression on earth, and who place no great estimate on the blessings of a free government, in comparison with emancipation, because after emancipation is once effected we shall have reached their millennium.

The question which is presented by the leaders of this party, at the present time, is whether we are ready to usurp a power not conferred by the Constitution of the United States, violate all the oaths which we have taken to support it, make this a war upon State rights, destroy a portion of the sovereignty of the States, which they unquestionably possessed upon the declaration of independence and the treaty of peace with Great Britain, and have never parted with, and thereby break up the union of the States under the Constitution. To this we unhesitatingly answer, No, a thousand times, No. This would be a revolution on the part of the North, and we are satisfied that an attempt to conduct the war on this basis must result in the final acknowledgment of the independence of the seceding States.

We desire not to be misunderstood, and we shall be glad not to be misrepresented. Our opposition to slavery knows none but constitutional and prudential limits. We have labored with all our powers for the restriction of slavery in the Territories, which we have no doubt is constitutional, the opinion of half a dozen judges of the Supreme Court to the contrary notwithstanding, and we should most heartily rejoice if some mode could be devised for the extinction of slavery in the States, without entailing upon the country worse evils. But

we denounce with unqualified condemnation the philanthropy, or the treason, call it which you please, that would violate the Constitution of the United States, and subvert the constitutions even of the seceding States, and thereby destroy the union of the States, and the hopes of constitutional liberty for the white race, in order to give freedom at once to four millions of slaves, seven eighths of whom would not know how to use it when they had obtained it, and who must suffer incomparably greater hardships, under existing circumstances, from such a gift, if it could be conferred on them by a Presidential proclamation, than they have thus far by the servitude to which they are subjected, which is unquestionably bad enough. If this insane persistence in the call for emancipation, either by proclamation or by confiscation first and trial afterward, shall result in divided counsels and divided effort at the North, and thereupon the rebellion shall by any possibility be successful, we do not propose to be numbered among those upon whose miserable heads the storm of popular indignation will fall, rightfully and pitilessly, and perhaps to a bitter end.

If the Union of the States is dissolved, the non-slaveholding States may possibly for a time remain united under one government. But we have no assurance that the free navigation of the Mississippi might not, at no distant day, induce the Western States to join the Southern Confederacy. Their material interests would in that case to some extent be advantaged thereby. It has already been held out as a lure to them to desist from their opposition.

In conclusion, we would say that we are in favor of the prosecution of the war with the greatest possible vigor. It has been forced upon the North, as we have shown, under circumstances of the most atrocious character. We could not refuse to fight without dishonor. We cannot fail of victory without subjugation. The rebel Provost Marshal of Frederick

is careering through the streets, with the flag of the United States tied to his stirrup and trailing in the dust. Shall we not fight? Those who cannot appreciate fighting for the honor of our flag, for the success of republican institutions, for the cause of freedom, and the hopes of the world, may perhaps understand, from what we have stated, that a peace which should give the rebels the control of the Mississippi would render the Free States tributary to the Southern Confederacy. It is idle to talk about a treaty for the free navigation of the river, or a declaration making it an open sea. To persons who cast aside all their constitutional obligations, and disregard their most solemn official oaths, the stipulations of a treaty would impose as little restraint as the meshes of a cobweb; and whenever passion or interest should require it, the banks of the river would again bristle with batteries, for the destruction of Northwestern commerce.

We are in favor of the organization and arming of negro regiments and brigades, if the time has come when they can be made available without detriment to the public service. The Confederates would not hesitate to do the same, if they could trust the negroes. Slaves are property, and the rebels do not hesitate to use any of our property, when it falls in their way, against us. Ah! but when we suggest this, slaves immediately become persons, and very dangerous persons. Well, we hope we shall not disturb the sensitive nerves of our Transatlantic cousins (who blow rebels from the mouths of their cannon, and whine hypocritically about the sinking in Charleston harbor of a few old vessels loaded with stone, as an outrage on civilization) when we say, that, if it becomes necessary, for the suppression of the rebellion, we are in favor of placing arms in the hands of these persons, and letting them fight in their own parties, and under their own leadership. That will be a proclamation for freedom of a practical character. It may be fast coming to this. European sympa-

thizers with the rebellion may as well prepare their hartshorn. Great Britain armed the Indians against us in the Revolution, and in the war of 1812. It is, we suppose, one of those things which, according to the London Times, she does not intend to do again — until she finds an opportunity. The South have armed the Indians against us in this war, as others besides Mr. Albert Pike can testify. All over the South and Southwest, men have formed themselves into guerilla bands, which murder, destroy, burn, and pillage. And we do not perceive the essential difference between black and white guerillas. It may be that the slaves thus armed will commit some atrocities. We shall regret it. But we repeat, This war has been forced upon us. We have sent to the field our bravest and our best. The idols of happy homes have fallen by hardship, disease, and battle, and deep anguish has come to many a Northern household. We know no reason why we should be more tender of the she-dragons of the South, who have been so loud-mouthed in the cry for secession and war, than we are of the best and dearest of our sons, who are marching under an intolerable heat and falling by the wayside, tenanting loathsome Southern prisons, dying of the fever of the camp, mangled by the missiles of war, not only in open conflict, but from the stealthy ambuscade of the Southern guerilla, and lying for days uncared for on an unfortunate battle-field of which we did not retain the possession. We hesitate not to say, that it will be better, immeasurably better, that the rebellion should be crushed, even with the incidental consequences attendant on a servile insurrection, than that the hopes of the world in the capacity of mankind to maintain free institutions should expire with American liberty.

Whatever of emancipation comes by the most vigorous prosecution of the war will come without any violation of constitutional obligations, and without any revolutionary measures on our part; and we do not object to it. We are

persuaded that there will be quite as much of it as the country can provide for, and this without any necessity for the reconstruction of our institutions, which it is idle to suppose can be done in a peaceable manner. The constitutional free government founded by our fathers has been transmitted to us as a priceless inheritance, and with God's help we intend to maintain it, that it may descend to our children.